

## Internal Revenue Service, Treasury

## § 1.613-1

items and are recoverable through depreciation.

(2) *Expense items:* Expenditures which must be charged off as expense, regardless of the option provided by this section, are those for labor, fuel, repairs, hauling, supplies, etc., in connection with the operation of the wells and of other facilities on the property for the production of geothermal steam or hot water.

(d) *Manner of making election.* The option granted in paragraph (a) of this section to charge intangible drilling and development costs to expense may be exercised by claiming intangible drilling and development costs as a deduction on the taxpayer's original or amended return for the first taxable year ending on or after October 1, 1978, in which the taxpayer pays or incurs such costs with respect to a geothermal well commenced on or after that date. No formal statement is necessary. The exercise of the option may be revoked by the filing of an amended return that does not claim such a deduction. If the taxpayer fails to deduct such costs as expenses in any such return, he shall be deemed to have elected to recover such costs through depletion to the extent that they are not represented by physical property, and through depreciation to the extent that they are represented by physical property. Upon the expiration of the time for filing a claim for credit or refund of any overpayment of tax imposed by chapter 1 of the Code with respect to the first taxable year ending on or after October 1, 1978, in which the taxpayer pays or incurs intangible drilling and development costs with respect to a geothermal well commenced on or after that date, the taxpayer is bound by his exercise of the option to charge such costs to expense or his deemed election to recover such costs through depletion or depreciation for that year and for all subsequent years.

(e) *Effective date.* The option granted by paragraph (a) of this section is available only for taxable years ending on or after October 1, 1978, with respect

to geothermal wells commenced on or after that date.

(Secs. 263, 9805, Internal Revenue Code of 1954 (92 Stat. 3201, 26 U.S.C. 362; 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7806, 47 FR 4061, Jan. 28, 1982]

### § 1.613-1 Percentage depletion; general rule.

(a) *In general.* In the case of a taxpayer computing the deduction for depletion under section 611 with respect to minerals on the basis of a percentage of gross income from the property, as defined in section 613(c) and §§ 1.613-3 and 1.613-4, the deduction shall be the percentage of the gross income as specified in section 613(b) and § 1.613-2. The deduction shall not exceed 50 percent (100 percent in the case of oil and gas properties for taxable years beginning after December 31, 1990) of the taxpayer's taxable income from the property (computed without regard to the allowance for depletion). The taxable income shall be computed in accordance with § 1.613-5. In no case shall the deduction for depletion computed under this section be less than the deduction computed upon the cost or other basis of the property provided in section 612 and the regulations thereunder. The apportionment of the deduction between the several owners of economic interests in a mineral deposit will be made as provided in paragraph (c) of § 1.611-1. For rules with respect to "gross income from the property" and for definition of the term "mining," see §§ 1.613-3 and 1.613-4. For definitions of the terms "property," "mineral deposit," and "minerals," see paragraph (d) of § 1.611-1.

(b) *Denial of percentage depletion in case of oil and gas wells.* Except as otherwise provided in section 613A and the regulations thereunder, in the case of oil or gas which is produced after December 31, 1974, and to which gross income is attributable after that date, the allowance for depletion shall be computed without regard to section 613.

[T.D. 8348, 56 FR 21938, May 13, 1991, as amended by T.D. 8437, 57 FR 43899, Sept. 23, 1992]